

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

1	PATTI TOOHEY,	)	Case 1:13-cv-01059
2		)	
3	Plaintiff,	)	
4		)	
5	v.	)	Alexandria, Virginia
6		)	March 14, 2014
7	MANTECH INTERNATIONAL	)	10:24 a.m.
8	CORPORATION,	)	
9		)	
10	Defendant.	)	
11		)	Pages 1 - 11

EXCERPT OF THE HONORABLE ANTHONY J. TRENGA'S RULING

APPEARANCES:

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1           THE COURT: I've reviewed the motion and the  
2 opposition and the exhibits. In this Title 7 case, the  
3 plaintiff alleges that her employment was terminated in  
4 retaliation for her raising concerns about racial  
5 discrimination and promotions and hiring at the  
6 company. The case is before the Court on defendant's  
7 motion for summary judgment.

8           In the face of defendant's motion,  
9 plaintiff's initial burden is to come forward with  
10 evidence sufficient to establish a *prima facie* case.  
11 In that regard, the plaintiff must first show that she  
12 engaged in protected activity; second, that ManTech,  
13 the defendant, took an adverse employment action  
14 against her; and third, that there exists a causal  
15 connection between her protected activity and the  
16 asserted adverse action.

17           Here there's no issue that plaintiff's  
18 termination constituted an adverse employment action;  
19 rather, the defendant claims that the evidence is  
20 insufficient as a matter of law to establish either  
21 that the plaintiff had engaged in protected activity or  
22 that her termination was causally related to any  
23 protected activity that she may have engaged in  
24 proffering a nondiscriminatory reason for her  
25 termination.

1           In evaluating the record for its sufficiency  
2 to withstand defendant's motion for summary judgment,  
3 the Court must view all of the facts together with any  
4 reasonable inferences in a light most favorable to the  
5 plaintiff. When viewed in that light, the record  
6 briefly summarized shows that at all material times the  
7 plaintiff was employed by the defendant as vice  
8 president of contracts for Mission, Cyber, Technology  
9 Solutions, otherwise known as MCTS, which is a division  
10 of ManTech, and that her direct supervisor was that  
11 division's president, William Varner.

12           As alleged by the plaintiff, the events that  
13 resulted in her termination issued out of her  
14 unsuccessful attempts to promote minority employees  
15 within her department and her expressed concerns over  
16 her inability to obtain those promotions for her  
17 employees while white employees in other departments  
18 were receiving promotions, all during a time when the  
19 company refused the promotion of her minority employees  
20 on the grounds of a companywide freeze on promotions.

21           The immediate events that led up to  
22 plaintiff's termination on May 1, 2012, began on  
23 April 11, 2012, when one of the minority employees in  
24 her department, who held the position of senior  
25 contracts manager, complained to the plaintiff about

1 her lack of advancement and specifically her inability  
2 to be promoted to the position of director of  
3 contracts, a role that she had been performing as the  
4 acting director and for which the plaintiff had  
5 recommended that she be promoted as the actual  
6 director.

7           This employee raised more general concerns  
8 about racial discrimination at ManTech both as to  
9 herself individually, as well as other employees or  
10 applicants for jobs at ManTech, including the lack of  
11 ethnic and racial minorities at the higher levels of  
12 corporate management and, in general, her perception  
13 that there existed at ManTech a disparate treatment of  
14 minority employees.

15           Much of these concerns centered on the  
16 actions of the vice president of finance, who had  
17 approval power over hires and promotions within  
18 plaintiff's department and her decisions to refuse the  
19 promotion of minority employees in plaintiff's  
20 department while approving the promotion of white  
21 employees in her own department.

22           On April 12, the minority employee who had  
23 met with the plaintiff provided 90 days notice of her  
24 resignation. That written notice of her resignation  
25 was sent to the plaintiff and also the head of the

1 human resources department, among others. In her  
2 resignation notice, she raised issues that she had  
3 previously raised with the plaintiff; although, she did  
4 not frame them in racial terms or in terms of  
5 discrimination.

6           On April 16, 2012, the plaintiff met with  
7 Mr. Varner, the president of her division and her  
8 direct supervisor, and also the head of the human  
9 resources department about the concerns of the employee  
10 who had resigned. At that meeting, the plaintiff  
11 reviewed a number of issues pertaining to hiring  
12 practices, including those raised by the resigning  
13 employee, including the lack of minorities and women in  
14 the executive ranks. Much of the discussion, again,  
15 focused on the actions and perceived attitudes within  
16 the finance department that controlled hiring and  
17 promotions.

18           The plaintiff also presented a letter that  
19 she had prepared. In that letter, she stated that she  
20 had concerns that required their attention and then  
21 listed in detail what she perceived as issues  
22 concerning disparate treatment with respect to  
23 promotions and hiring, particularly focusing on the  
24 actions of the person who had authority over those  
25 decisions. She opined that further investigation was

1 needed. In that regard, she stated, quote, I think we  
2 need to look into this and treat it properly, close  
3 quote, and that it was her sense that, quote, there may  
4 be the possibility of an issue here, close quote.  
5 Overall, she requested further discussion in working  
6 with Mr. Varner and Mr. Painter to, in her words,  
7 quote, get the facts and figure out what we can do to  
8 further the company's best interest, closed quote.

9 On April 19, she met with the defendant's  
10 general counsel to discuss her concerns, and on  
11 April 27, the employment of the minority employee who  
12 had tendered a resignation in 90 days was terminated.

13 On May 1, 2012, the plaintiff was called to  
14 the office of Mr. Varner, her direct supervisor, and  
15 told that her employment was being terminated effective  
16 within 30 days. On May 29, 2012, she was, in fact,  
17 terminated. During the May 1 meeting, plaintiff was  
18 told that she was being terminated for performance  
19 reasons; although, performance issues had never been  
20 previously raised with her. She had within several  
21 months prior to the May 1 meeting received performance  
22 bonuses. Her termination without notice of performance  
23 issues violated company policy, and she had only a few  
24 days before been introduced to a major customer as its  
25 ManTech contact.

1           The first issue is whether the plaintiff had  
2 engaged in protected activity. Title 7 protects  
3 employees who oppose any unlawful employment practice  
4 under Title 7. Plaintiff does not need to engage in a  
5 formal process of adjudicating a discrimination claim,  
6 and a protected activity may consist of simply voicing  
7 one's opinion in order to bring attention to an  
8 employer's discriminatory activities. It allows an  
9 employee to complain without fear of retaliation about  
10 suspected improper practices.

11           The defendant claims that the plaintiff did  
12 not engage in protected activity because she was simply  
13 doing her job as the senior vice president for  
14 contracts when she reported the complaints of one of  
15 her employees referencing the so-called manager rule  
16 adopted in other circuits.

17           The Court has considered the manager rule and  
18 whether it is consistent with Fourth Circuit  
19 jurisprudence and concludes that even if the Court were  
20 to subscribe to the manager rule, the evidence here  
21 when viewed in a light most favorable to the plaintiff  
22 would not preclude her claim as a matter of law that  
23 she engaged in protected activity. She was the head of  
24 contracts. Even if it were her job to report employee  
25 complaints, it was not her job to investigate or

1 evaluate those complaints or weigh in on whether there  
2 existed unlawful employment practices issuing out of  
3 other departments.

4           For these reasons, the Court concludes that  
5 the record when viewed most favorably to the plaintiff  
6 does not allow the Court to conclude as a matter of law  
7 that plaintiff did not engage in protected activity and  
8 denies the motion for summary judgment on those  
9 grounds.

10           As I indicated, there is no issue that the  
11 plaintiff suffered an adverse employment action when  
12 she was terminated. The only issue is whether the  
13 record when viewed most favorable to the plaintiff is  
14 insufficient as a matter of law to establish that her  
15 termination was causally related to her protected  
16 activity. Here the adverse employment action occurred  
17 within a month of her protected activity, and under  
18 Fourth Circuit precedent, an inference of causal  
19 connection may be raised based on that temporal  
20 proximity.

21           There is also evidence that will be discussed  
22 in a moment with respect to the issue of pretext from  
23 which a causal connection may be inferred. For these  
24 reasons, the Court finds that the plaintiff has  
25 presented sufficient evidence to establish a *prima*



1 *facie* case.

2           The defendant responds by asserting what they  
3 contend is a nondiscriminatory reason for her  
4 termination, which under the *McDonnell Douglas* rubric  
5 requires the plaintiff to come forward with evidence  
6 that would allow a fact finder to conclude that the  
7 facially nondiscriminatory reason is a pretext for  
8 retaliation.

9           Here the defendant's claim that the plaintiff  
10 was terminated for performance reasons does constitute  
11 a facially nondiscriminatory reason for her  
12 termination, which would preclude plaintiff's claim  
13 absent sufficient evidence that such a reason was  
14 simply a pretext for a retaliatory discharge.

15           Here the record when viewed most favorably to  
16 the plaintiff establishes facts which would allow a  
17 fact finder to conclude that the proffered  
18 nondiscriminatory reason, based on performance  
19 deficiencies, was, in fact, a pretext for retaliation  
20 for protected activity, a temporal proximity of the  
21 protected activity, the lack of any prior notice to the  
22 plaintiff of any performance issues, the violation of  
23 company policy in terminating plaintiff's employment  
24 without any such notice, the actions favorable to the  
25 plaintiff by Mr. Varner, the plaintiff's immediate

1 supervisor who terminated her, and those activities in  
2 the several months that preceded her being informed of  
3 her termination, all of which reflected his confidence  
4 in her and her good performance, which includes  
5 substantial bonuses, her introduction just days before  
6 the protected activity to a major company customer all  
7 undercut the credibility of the reasons now proffered  
8 for her termination.

9           For these reasons, the Court concludes that  
10 the record is insufficient to find that the defendant  
11 is entitled to judgment as a matter of law, and its  
12 motion for summary judgment will be denied. The Court  
13 will issue an order.

14           All right. Thank you. Counsel is excused.

15           MR. NIEMAN: Your Honor --

16           THE COURT: Yes.

17           MR. NIEMAN: -- two questions. There were  
18 three aspects alleged for retaliation. The termination  
19 was one. The other two were the alleged comments to  
20 Ms. Hickok and the alleged e-mail meeting request to  
21 CSC.

22           THE COURT: Right.

23           MR. NIEMAN: They appear to have been  
24 conceded. Are they still alive for trial purposes?

25           THE COURT: The Court has not ruled on those.

1 The Court will reserve on those pending the evidence at  
2 trial.

3 MR. NIEMAN: The other question is regarding  
4 the protected activity. There are two varieties,  
5 participation and opposition. Are both theories still  
6 viable for trial or only the opposition?

7 THE COURT: Well, I think both theories are  
8 still viable. Clearly, there's enough on oppositional  
9 activity, and that was the focus of the Court's  
10 decision. I have not ruled definitively on anything  
11 else.

12 MR. NIEMAN: Thank you, Your Honor.

13 THE COURT: All right. Thank you.

14 MR. McEVILLY: Thank you, Your Honor.

15 -----  
Time: 10:35 a.m.

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22 I certify that the foregoing is a true and  
23 accurate transcription of my stenographic notes.

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/s/  
Rhonda F. Montgomery, CCR, RPR